

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

EMILY A. TICE,	)	Case No.: 5:17 CV 2339
	)	
Plaintiff	)	
	)	JUDGE SOLOMON OLIVER, JR.
v.	)	
	)	
COMMISSIONER OF SOCIAL	)	
SECURITY ADMINISTRATION,	)	
	)	
Defendant	)	<u>ORDER</u>

The Commissioner of Social Security Administration (“Commissioner”) denied disability benefits to Plaintiff Emily A. Tice (“Plaintiff” or “Tice”), in the above-captioned case. Plaintiff sought judicial review of the Commissioner’s decision, and this court referred the case to Magistrate Judge Kathleen B. Burke (“Magistrate Judge” or “Judge Burke”) for preparation of a Report and Recommendation (“R & R”). Both parties submitted briefs on the merits. Plaintiff requested an order reversing the Commissioner’s decision on the basis that the Administrative Law Judge (“ALJ”), in finding Plaintiff’s impairments did not meet or equal a listed impairment, failed to properly consider her multiple sclerosis (“MS”) and autoimmune disorders at Step Three of the Sequential Evaluation. The Commissioner sought final judgment upholding the decision below.

Judge Burke submitted her R & R (ECF No. 16) on October 23, 2018, concluding that the court should affirm the Commissioner’s final decision. Specifically, the Magistrate Judge rejected Tice’s assertion that the records raise a substantial question as to whether her impairments meet the requirements of Listing 11.09A Multiple Sclerosis, Listing 14.02A Systemic Lupus Erythematosus (“SLE”), Listing 14.03A Systemic Vasculitis, and Listing 14.06A Undifferentiated and Mixed Connective Tissue Disease. (R & R at 23–31.) Judge Burke found that the ALJ considered the

subjective reports upon which Tice relied, but nonetheless found that they were insufficient to demonstrate that Plaintiff's relapsing remitting MS meets the requirements of Listing 11.09A. (R & R at 25.) Similarly, Judge Burke noted that the ALJ acknowledged that Tice had been diagnosed with cutaneous lupus at one time, but because the diagnosis was later retracted, Tice did not meet the requirements of Listing 14.02A SLE. (R & R at 27–28.) Tice did not raise arguments based on Listing 14.03A Systemic Vasculitis and Listing 14.06A Undifferentiated and Mixed Connective Tissue Disease until her reply brief, and the Magistrate Judge correctly noted that the court can, therefore, decline to consider those arguments and deem them waived. But even if the court were to consider these arguments, the Magistrate Judge recommended that the court reject Tice's request to reverse and remand the case for further consideration of her impairments under these newly identified listings because the ALJ had already considered these listings when the ALJ found that no treating or examining physician indicated findings that would satisfy the severity requirements of any listed impairment. (R & R at 28.) Thus, Tice did not meet her burden of showing that her impairments met the requirements of Listings 14.03A or 14.06A.

On November 6, 2018, Plaintiff responded to the Magistrate Judge's R & R indicating that she would not be filing objections to the R & R.

The court finds, after careful *de novo* review of the Magistrate Judge's R & R and all other relevant documents in the record, that the Magistrate Judge's conclusions are fully supported by the record and controlling case law. Accordingly, the court adopts as its own Judge Burke's Report and Recommendation (ECF No. 16). The court hereby affirms the Commissioner's final decision.

IT IS SO ORDERED.

/s/ SOLOMON OLIVER, JR.  
UNITED STATES DISTRICT JUDGE

November 26, 2018